

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD AZPITARTE,

Plaintiff,

v.

KING COUNTY, RON SIMS, SUSAN
RAHR, DAVID REICHERT, DENOBI
OLEGBA, ELIZABETH DERAITUS,
LAMAR REED, THE ESTATE OF STEVE
COX, SCOTT LAVIELLE, STEVE
WRIGHT, JIM McMEINES, CEDAR
RAPIDS TOWING LLC, JONY McCALL,
GEORGE McCALL, MARK LEMOINE,
JASON STANLEY, STEPHANIE WARDEN,
MIKE HATCH, CW WILLIAMS
CONSTRUCTION COMPANY, SYDNEY
JACKSON and BILL TURNER,

Defendants.

Case No. C07-1998-JCC

ORDER DENYING MOTION
FOR RECONSIDERATION

This matter comes before the Court on Plaintiff's Motion for Reconsideration (Dkt. No. 79). On March 3, 2009, the Court granted Defendants' Motion to Dismiss (Dkt. No. 64) for failure to prosecute with reasonable diligence and for failure to comply with the Court's orders, the Federal Rules of Civil Procedure, and the Local Rules. (Order 6 (Dkt. No. 78).) Plaintiff

ORDER
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1 now moves for reconsideration of the dismissal. (Dkt. No. 79.) Having reviewed the motion
2 papers and the supporting declarations, and being fully advised, the Court DENIES the motion.

3 The Local Rules provide:

4 Motions for reconsideration are disfavored. The court will ordinarily deny such
5 motions in the absence of a showing of manifest error in the prior ruling or a
6 showing of new facts or legal authority which could not have been brought to its
attention earlier with reasonable diligence.

7 Local Rule W.D. Wash. CR 7(h).

8 Plaintiff has not shown manifest error or new facts or legal authority that could not
9 have been brought to the Court's attention earlier with reasonable diligence. Plaintiff claims
10 that he was prejudiced by the expedited briefing schedule set by the Court because his
11 attorney's "schedule was hectic for that week, and [he] was unable to obtain evidence that [he]
12 might otherwise have been able to obtain had [he] been given more time" (Scannell Decl. ¶ 1
13 (Dkt. No. 81 at 1)); however, Plaintiff did not timely object to this expedited schedule and fails
14 to describe what evidence he would have included had he had more time. Plaintiff also argues
15 that he should not have been faulted for only serving one of the defendants, but this fact played
16 no role in the Court's legal analysis. (*See* Order 6 (Dkt. No. 78) (enumerating the numerous
17 violations that supported dismissal).) He argues that the public's interest in expeditious
18 litigation is no more pronounced when the defendant is the government (Mot. 2 (Dkt. No. 79)),
19 but his argument is inconsequential because "[t]he public's interest in expeditious resolution of
20 litigation *always* favors dismissal." *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002)
21 (emphasis added). Plaintiff repeats his assertion that mediation would have been futile because
22 his motion to amend was still pending; yet, as the Court previously stated, "a pending motion
23 does not authorize a party to disobey an explicit Court order," especially when Plaintiff never
24 raised his concerns with the Court. (Order 9 (Dkt. No. 78).) Plaintiff also broadly claims that
25 Defendants engaged in similar "misconduct," citing a single missed appointment that was
26 clearly a misunderstanding, quite likely caused by Plaintiff's attorney's own confusion. (*See*

1 7/24/08 Kim E-mail to Scannell (Dkt. No. 62-3) (claiming that Plaintiff's attorney had not
2 confirmed the meeting and had not responded to a follow-up call).)

3 The remainder of Plaintiff's motion is devoted to challenging the Court's finding that
4 he had "little chance of success on the merits." (Order 10 (Dkt. No. 78).) Having reviewed the
5 record and the points raised in the motion for reconsideration, the Court continues to find that
6 his chances of success would have been slim. Yet even if Plaintiff were more likely to succeed
7 at trial, the public policy favoring disposition of cases on the merits would not outweigh the
8 remaining four factors, each of which strongly favored dismissal. (*Id.* at 6–11.)

9 Plaintiff has failed to demonstrate grounds for reconsideration of the Court's prior
10 Order. Critically, he has still not provided any justification for his flagrant misconduct, instead
11 mischaracterizing it as a "few incidents of minor deadlines that were missed." (Mot. 2 (Dkt.
12 No. 79).) As the Court has already addressed, "Plaintiff and his attorney . . . exhibited a pattern
13 of unprofessionalism and unreasonable delay throughout [the] entire litigation, from discovery,
14 to motion briefing, to mediation, to the preparation of a pretrial statement," and dismissal
15 under the circumstances was appropriate. (Order 11 (Dkt. No. 78).)

16 SO ORDERED this 1st day of April, 2009.

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20 John C. Coughenour
21 UNITED STATES DISTRICT JUDGE
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